

**DECISION**

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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-214842

**DATE:** June 19, 1984

**MATTER OF:** Foreston Coal Sales Co., Inc.

**DIGEST:**

1. Protest of an allegedly restrictive solicitation provision is untimely where not filed until after bid opening.
2. Protest of rejection of bid is untimely where not filed with GAO within 10 working days after protester learns of rejection of bid and basis for rejection.

Foreston Coal Sales Co., Inc. protests the award of a contract for 2,700 tons of anthracite, Buckwheat #2 coal to Beltrami Enterprises, Inc. under invitation for bids (IFB) No. DLA600-84-B-0015 by the Defense Fuel Supply Center, Defense Logistics Agency (DLA). Foreston contends that the solicitation requirement that the coal contain a maximum of 8 percent of volatile matter is unduly restrictive and that award to it rather than Beltrami is in the government's best interest.

We dismiss the protest.

The IFB was issued on November 21, 1983, and bids were opened on January 5, 1984. Award for this item was made to Beltrami on March 2. On March 5 the procurement agent orally advised Foreston that its bid was rejected because the coal it offered exceeded the maximum volatility requirement and that award had been made to Beltrami. Foreston subsequently filed this protest with our Office on April 3.

The solicitation advised bidders that the "minimum specification quality required" included a maximum of 8 percent volatile matter and the IFB included clause D14, "Evaluation of Offers," which stated in part:

"(g) The Government will determine, based upon published and special reports

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issued by [the Department of Energy] or the U.S. Army General Material and Petroleum Activity Laboratory, if the coal offered from the 'mine' or 'mines' set forth in the offer meets all the requirements of the specifications shown on the schedule. Coal not meeting the specifications will be rejected as non-responsive. . . . It shall be incumbent upon offerors to insure that coal offered has been sampled . . . prior to submitting an offer. . . ."

We have held that pursuant to clause D14 DLA could properly consider the coal analysis reports in determining a bid's responsiveness and we have upheld the rejection of bids as nonresponsive which were shown by coal analysis reports on file to offer coal not meeting specification requirements. See Fuel Supply Corporation, B-214095, April 16, 1984, 84-1 CPD ¶ 419; National Energy Resources, Inc., B-206275, Feb. 1, 1983, 83-1 CPD ¶ 108.

Here, Foreston offered to supply coal from the Kocher, Gowen or Ascot mines. For varying reasons, coal from none of the three sources was found to be responsive to the IFB's requirements. Foreston has not disputed the rejection of its bid with respect to the Gowen and Amscot mines. Foreston's bid based on the Kocher mine offered the greatest "As Received British Thermal Units Per One Cent Delivered at Destination," and therefore was in line for award. Two Army analysis reports, however, showed that coal of the same size from the Kocher mine delivered to the Tobyhanna Army Depot had volatile matter content of 8.1 and 8.3 percent. Since this exceeded the specification requirement that the coal have a maximum volatile matter content of 8 percent, Foreston's bid was rejected as nonresponsive.

Foreston attacks the 8 percent requirement as unduly restrictive of competition and argues that since its bid was evaluated as offering the greatest heating value per one cent delivered, it was arbitrary for the Army to reject that bid and pay \$6,000 more to another supplier solely on the basis that the volatile matter specification was exceeded by approximately 0.1 percent. In its protest, therefore, Foreston has objected both to the terms of the solicitation and the evaluation and rejection of its bid. For the reasons stated below, viewed from either perspective, the protest is untimely.

Our Bid Protest Procedures require that a protest alleging improprieties in an IFB which are apparent prior to bid opening be filed prior to that time. 4 C.F.R. § 21.2(b)(1) (1984). Since the allegedly unduly restrictive specification requirement was evident from the face of the solicitation, Foreston's protest, not filed until after bid opening, is untimely on this issue. See Colonial Ford Truck Sales, Inc., B-214239, Feb. 10, 1984, 84-1 CPD ¶ 174.

Our Procedures further require that protests of other than solicitation improprieties be filed not later than 10 working days after the basis for protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(c). Where a bidder is advised of the unacceptability of its bid and the reason for its rejection, a protest based on that rejection must be filed within 10 working days of the bidder's receipt of such notice. Appalachian Trading, Inc., B-214095.2, Feb. 10, 1984, 84-1 CPD ¶ 168. Foreston learned of the rejection of its bid and the reason for it on March 5, but its protest was not received by our Office until April 3, almost 1 month after it knew the basis for protest. Therefore, Foreston's protest on this matter is also untimely since it was not filed with our Office within the prescribed time period.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel